

REMARKS

This Amendment is responsive to the Final Office Action dated December 1, 2006 (hereinafter the “Final Action”) in the above identified application.

In view of the above amendments and the following remarks, we respectfully request favorable reexamination and allowance of the pending claims.

A. Status of the Application

Claims **1, 27-29, 56, 60, 65, 69, 71, 75, 80-82 and 92-95** have been amended.

Claims **26 and 76-79** have been cancelled.

Claims **1-25, 72-75, and 80-95** are pending. Of these, claims **1, 56, 60, 64, 69, 71, 75, 80-82 and 92-95** are the only independent claims (a total of 14 independent claims).

B. The Final Office Action

Claims **82-91** were rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Claims **1-18, 20-23, 26-71, 75 and 80-85** were rejected under 35 U.S.C. 102(e) for being anticipated by Chen et al., U.S. Patent No. 6,741,969 B1 (hereinafter “Chen”).

Claims **19, 24, 25, 72-74, and 76-79** were rejected under 35 U.S.C. 103(a) for being obvious in view of Chen.

C. The Section 112, second paragraph Rejections

In paragraph 2 of the Final Action, the Examiner asserts that the phrase “third party” of claims **82-91** is indefinite. Independent claim **82** has been amended and now recites:

providing an indication of a commitment by at least one third party to subsidize a price reduction for at least one item available from a merchant, wherein the third party is different from the merchant, and wherein said commitment includes an associated qualifying action; (Emphasis added)

We respectfully submit that claim **82** clearly recites that the third party is different from the merchant, and thus that the wording informs the common meaning of a third party as an entity other than the principals involved in a transaction. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. §112, second paragraph rejection of claim **82**. In addition, the Section 112 rejection of claims **83-91** should be withdrawn for at least the same reason, as each of these claims depends, either directly or indirectly, on claim **82**.

D. Section 102(e) Rejections

Claims **1-18, 20-23, 26-71, 75 and 80-95** have been rejected as being anticipated by Chen. Consequently, independent claims **1, 56, 60, 65, 69, 71, 75, 80-82, and 92-95** have been amended, and claim **26** has been cancelled.

In particular, claims **1, 56, 60, 80 and 92-95** now recite that the plurality of products are *associated with at least one merchant*, and that the subsidy offer is *associated with at least one subsidizer different from the at least one merchant*. Similarly, independent claim **69** has been amended to recite that the plurality of products are *associated with at least one merchant*, and that the qualifying action is *associated with a third party different from the at least one merchant*. Independent claims **71, 75 and 81** have also been amended to recite that each of the qualifying actions includes *an associated third party different from the restaurant*. In addition, independent claim **82** has been amended to make it clear that *the third party is different from the merchant*. Support for these changes can be found in the application, for example, on page 9, line 27 to page 10, line 14; page 34, line 2 to page 37, line 25 with regard to Figs. 9-11; and in original claim **26**. No new matter has been added.

The method of claim **1** includes providing an indication of a plurality of products that each have an initial price and that are *associated with at least one merchant*. Also included is providing an indication of an available price adjustment, and an indication of a subsidy offer *being associated with at least one subsidizer different from the at least one merchant*. As disclosed in the application, in an implementation, a third party subsidizer covers any losses incurred by the merchant due to the price adjustment, and the term “qualifying action” includes

many different types of activity that may place an additional burden on a customer wishing to obtain the benefit of the subsidy. Examples of qualifying actions that may be associated with the third party include test driving a vehicle at an automobile dealership, shopping at a particular store, using a particular vending machine, using a specific credit card during a purchase, switching long distance telephone service providers, accepting a magazine subscription, and/or some combination of activities (See, for example, the application at page 18, lines 18-24, and at page 6, line 22 to page 7, line 3). Such a process advantageously permits the merchant to offer different prices to different customers for the same products (because a particular price for a product may depend on the subsidy and / or qualifying action), thereby allowing the customers to make purchasing decisions based on their own price sensitivity. Furthermore, the merchant may also receive a benefit from the completion of a qualifying action by a customer (see page 9, lines 17-26). The third party subsidizer benefits by gaining access to the merchant's customers for marketing opportunities (see page 10, lines 2-6). Customers also benefit because they get access to offers for products and / or items at reduced prices if they are willing to complete or otherwise satisfy a qualifying action (see page 10, lines 7-14).

Chen does not teach or suggest such processes or systems. In particular, Chen is directed to methods and systems for reducing excess capacity of restaurants and other industries during off-peak hours. It features an auction system that allows customers to bid for gift certificates that are redeemable at the businesses during the predetermined off-peak times (See Chen, Abstract; col. 1, lines 43-51; and col. 8, lines 19-31). In another aspect, Chen's system permits a user to enter an "incentive request" that may be processed by or for a restaurant to determine if a dining incentive should be issued to the customer. In another aspect, if an incentive is accepted, it may be issued to the customer without a paper certificate, for example, by storing the incentive information electronically with a payment processing system associated with the restaurant. In this case, a customer may provide payment information to receive the incentive, and when that payment information is input at the restaurant (i.e., a restaurant employee scans the customer's credit card to obtain payment for a meal that was served), then the incentive can be retrieved and automatically deducted from the amount to be charged to that credit card number (Chen, col. 6, line 61, to col. 7, line 9).

Consequently, Chen fails to teach or even suggest providing an indication of a plurality of products that are *associated with at least one merchant*, and providing an indication of a

subsidy offer associated with a price adjustment, wherein the subsidy offer is *associated with at least one subsidizer different from the at least one merchant* as generally recited by claims **1, 56, 60, 80 and 92-95**. Furthermore, Chen fails to suggest or teach methods and apparatus wherein a plurality of products are *associated with at least one merchant*, and wherein a qualifying action is *associated with a third party different from the at least one merchant* as recited by independent claim **69**. In addition, Chen does not teach or suggest that each of a plurality of qualifying actions includes *an associated third party different from the restaurant* as required by independent claims **71, 75 and 81**. Lastly, Chen fails to teach or suggest to provide an indication of a commitment by a third party to subsidize a price reduction for at least one item available from a merchant, *wherein the third party is different from the merchant*, and then *providing, by the third party, the subsidization amount*, as recited by independent claim **82**. Accordingly, none of these independent claims are anticipated by Chen. Furthermore, since each of claims **2-18, 20-23, 27-55, 57-59, 61-64, 70, 72-74 and 83-91** depends upon either of claims **1, 56, 60, 69, 71 or 82**, these claims are not anticipated for at least the same reasons.

In view of the above amendments and remarks, Applicants respectfully assert that claims **1-18, 20-23, 26-71, 75 and 80-95** are patentably distinct over Chen, and thus request withdrawal of all of the 35 U.S.C. § 102(e) rejections.

E. Section 103(a) Rejection

Claims **19, 24, 25, 72-74 and 76-79** were rejected as being obvious in view of Chen.

Although we do not necessarily agree with the Examiner's rejection, claims **76-79** have been cancelled herein without prejudice in order to expedite the prosecution of the present application. Applicants reserve the right to refile claims **76-79** in a continuation application during the pendency of the present case.

Pending dependent claims **19, 24, 25 and 72-74** all concern verifying accuracy of a record, or receiving a verification request, or verifying the accuracy of a price associated with at least one item in a verification request. The Examiner admits that Chen does not teach verification (See paragraph 11 on page 3). However, as support for this rejection, the Final Action recites:

“Because verification is common sense (“measure twice, cut once”) and easy to achieve (Waiter, will I get the discount if I order this item?), it would have been obvious... to add price verification to the teachings of Chen et al.”. (Final Action, paragraph 11 on page 3).

We again submit that such an assertion does not constitute clear and particular findings supported by actual and substantial evidence of record that could support such an obviousness rejection. In addition, the Examiner has failed to provide any evidence to support a motivation to provide for any such features in Chen. Accordingly, we submit that no *prima facie* case of obviousness has been made for claims **19, 24, 25 and 72-74**.

Moreover, claims **19, 24, 25 and 72-74** directly or indirectly depend on at least one of independent claims **1 and 71**, which are patentably distinct from Chen for the reasons explained above. Consequently, claims **19, 24, 25 and 72-74** should be allowable for at least the same reasons.

In view of the above remarks, Applicants respectfully request withdrawal of the rejection based on 35 U.S.C. 103(a).

F. Conclusion

We respectfully submit that all of the claims are in condition for allowance, and request early and favorable re-examination and reconsideration.

If the Examiner has any questions regarding this Amendment or the present application, the Examiner is cordially requested to contact Stephan Filipek at telephone no. 203-461-7252 or via electronic mail at sfilipek@walkerdigital.com.

G. Fees and Other Payments

Applicants submit fees herewith to cover the costs set forth in 37 C.F.R. 1.17(e) for filing a request for continued examination. We do not believe that any other fees are due. But if a fee should be necessary to continue prosecution of the present application, please charge any such required fee to our Deposit Account No. 50-0271.

In addition, please credit any overpayment to Deposit Account No. 50-0271.

Respectfully submitted,

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Date

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